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U.S. Department of Homeland Security
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Washington, DC 20536

U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: NEBRASKA SERVICE CENTER Date: MAR 11 2004

IN RE: [redacted]

PETITION: Application for Permission to Reapply for Admission into the United States after Deportation or Removal under section 212(a)(9)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(A)(iii)

ON BEHALF OF PETITIONER: SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212) was denied by the Director, Nebraska Service Center on application and a subsequent motion to reopen, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Mexico who was removed from the United States on May 19, 1984. The applicant illegally reentered the United States on or about November 22, 1984. The applicant's order of removal was subsequently reinstated and the applicant was again removed from the United States on July 19, 2000. On September 28, 1982, the applicant married a legal permanent resident of the United States and he is the beneficiary of an approved Petition for Alien Relative. On November 9, 1995, the applicant's wife became a naturalized citizen of the United States. The applicant seeks permission to reapply for admission into the United States under section 212(a)(9)(A)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(A)(ii), in order to live with his wife and children.

The director determined that the applicant reentered the United States without being admitted after his removal on July 19, 2000 and is therefore inadmissible pursuant to section 212(a)(9)(C)(i)(II) of the Act. The I-212 application was denied accordingly. *See* Decision on Application for Permission to Reapply After Deportation, dated February 14, 2002 and Decision on Motion to Reopen, dated March 20, 2003.

On appeal, the applicant submits letters from doctors and copies of medical documents pertaining to the health of the applicant's son. The record also contains letters from the applicant, dated May 24, 2002 and January 14, 2002, respectively; a copy of a medication prescription for the applicant's spouse; a copy of the U.S. birth certificate of the applicant's child; a letter from the applicant's spouse, undated; a copy and translation of the Mexican birth certificate of the applicant; a copy of the marriage license of the applicant and his spouse; a copy of the divorce decree for the applicant and his former spouse and copies of tax and financial documents for the couple. The entire record was reviewed and considered in rendering a decision.

Section 212(a) of the Act, 8 U.S.C. § 1182(a) states in pertinent part:

> (9) Aliens Previously Removed.-
>
> (A) Certain aliens previously removed.-
>
> . . . .
>
> (ii) [A]ny alien . . . who-
>
> (I) Has been ordered removed under section 240 or any other provision of law . . . is inadmissible.
>
> . . . .
>
> (iii) Exception.-Clauses (i) and (ii) shall not apply to an alien seeking admission within a period if, prior to the date of the alien's reembarkation at a place outside the United States or attempt to be

> admitted from foreign contiguous territory, the Attorney General [now the Secretary of Homeland Security (Secretary)] has consented to the alien's reapplying for admission.

Approval of a Form I-212 Application for Permission to Apply for Admission after Deportation or Removal requires that the favorable aspects of the applicant's case outweigh the unfavorable aspects.

> In determining whether the consent required by statute should be granted, all pertinent circumstances relating to the applicant which are set forth in the record of proceedings are considered. These include but are not limited to the basis for deportation, recency of deportation, length of residence in the United States, the moral character of the applicant, his respect for law and order, evidence of reformation and rehabilitation, his family responsibilities, any inadmissibility to the United States under other sections of law, hardship involved to himself and others, and the need for his services in the United States.

Matter of Tin, 14 I&N Dec. 373, 374 (Comm. 1973).

The favorable factor in the application is the hardship imposed on the applicant's spouse and children by his inadmissibility to the United States.

On appeal, the applicant submits letters from doctors stating that the applicant's son suffers from an immunodeficiency. As a result, the applicant's son cannot go to daycare and must be cared for in his own home. *See* Letter from Anne S. Moore, MD, dated May 9, 2002. The applicant asserts that this situation renders his wife unable to work so his presence is required for the financial support of the family. *See* Letter from Jose P. Hernandez, dated May 24, 2002.

The unfavorable factors in the application include the many years that the applicant has lived and worked in the United States in violation of immigration law; the fact that the applicant is subject to reinstatement of his removal orders and the applicant's inadmissibility to the United States owing to his unlawful presence in the United States which requires him to seek an approved Waiver of Grounds of Excludability (Form I-601). The record also indicates that the applicant has a criminal record in the United States. The applicant offers no evidence of reformation or rehabilitation from his disregard for the immigration laws of this country nor does the record demonstrate that the applicant possesses a moral character or respect for law and order.

Section 241(a) states in pertinent part:

> (5) Reinstatement of removal orders against aliens illegally reentering. - If the Attorney General [Secretary of Homeland Security (Secretary)] finds that an alien has reentered the United States illegally after having been removed or having departed voluntarily, under an order of removal, the prior order of removal is reinstated from its original date and is *not* subject to being reopened or reviewed, the alien is not eligible and may not apply for any relief under this Act, and the alien shall be removed under the prior order at any time after the reentry. (emphasis added)

The applicant has not established that the favorable factors in his application outweigh the unfavorable factors. The district director's denial of the I-212 application was thus proper. Furthermore, because the applicant is subject to reinstatement of his removal order pursuant to section 241(a)(5) of the Act, he is ineligible for adjustment of status or any other relief under the Act.

In discretionary matters, the applicant bears the full burden of proving his eligibility for discretionary relief. *See Matter of Ducret,* 15 I&N Dec. 620 (BIA 1976). The applicant failed to establish that he warrants a favorable exercise of the Secretary's discretion. Therefore, the appeal will be dismissed

ORDER: The appeal is dismissed.